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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

STEVEN NUR AHMED,
Plaintiff and Appellant,

v.

PERALTA COMMUNITY COLLEGE
DISTRICT et al.,
Defendants and Respondents.

A105426

(Alameda County
Super. Ct. No. RGO3089412)

Steven Nur Ahmed (hereafter Ahmed) appeals an order sustaining a demurrer to his complaint without leave to amend on the ground of noncompliance with the Government Claims Act. We affirm.

PROCEDURAL BACKGROUND

The pleadings allege that plaintiff Ahmed is a part-time sociology instructor at Laney College who has taught “at the university level and community college level for approximately 18 years.” He applied for a full-time faculty position teaching sociology at the College of Alameda, a campus of the Peralta Community College District (District) and was accepted to be interviewed on June 4, 2002, by the Advisory Selection Committee. The interview was subject to Screening Committee Rules and Guidelines established by the policies and procedures of the District and collective bargaining agreements.

On June 4, 2002, Ahmed was interviewed by a five-member committee that included the chairperson, Eddie Loretto, and a faculty member, J. Chichester, whom he

“had challenged to a controversial debate circa 1999 because of racist remarks” directed against African-Americans. He alleges that the Academic Dean of the District, Bob Grill, was responsible for approving the participation of Chichester on the committee. After the interview, Ahmed was rejected for the position by a three-to-two vote.

On April 1, 2003, Ahmed filed a complaint against Bob Grill and Eddie Loretto seeking damages for failure to secure the faculty position. The first three causes of action for intentional misrepresentation and negligence were predicated on noncompliance with the required procedures for the conduct of interviews. The fourth cause of action alleges conspiracy to manipulate the membership of the Advisory Selection Committee and the conduct of the interview.

Defendants filed a demurrer to the complaint on the ground that it failed to allege compliance with the Government Claims Act (Gov. Code, § 900 et seq.).¹ The trial court sustained the demurrer with leave to amend. Plaintiff filed an amended complaint with minor changes. The defendants again filed a demurrer which was also sustained with leave to amend.

Ahmed then filed a second amended complaint against the two individuals, Grill and Loretto, and the District. The complaint alleged four similar causes of action for intentional misrepresentation and negligence predicated on a failure to comply with applicable procedures. The fifth cause of action again alleged conspiracy with respect to the formation and conduct of the hiring committee. The sixth cause of action for negligence alleged that on November 8, 2002, Ahmed faxed to the District’s Vice Chancellor of Administrative Services, Larry Hardy, a completed grievance form, which was attached as an exhibit to the complaint. On November 13, 2002, he met personally with Hardy in his office, but Hardy took no action on the grievance. The complaint prayed for damages against the defendants in the amount of \$170,000 on the first five causes of action and for damages in the amount of \$800,000 on the sixth cause of action.

Defendants again filed a demurrer based on a failure to comply with the Government Claims Act. In an order entered November 25, 2003, the court sustained the

¹ All further statutory references are to the Government Code.

demurrer without leave to amend on the ground that “[n]either the allegations in the complaint nor the documents attached thereto substantially comply with the claim presentation requirements of the Government Code.” Accordingly, the court dismissed the second amended complaint. Ahmed filed a timely notice of appeal.

DISCUSSION

A. Legal Background

The key provision in Government Code, section 911.2, provides: “[a] claim relating to a cause of action for death or for injury to person or to personal property . . . shall be presented as provided in Article 2 (commencing with Section 915) of this chapter not later than six months after the accrual of the cause of action.” Section 945.4 establishes that presentation of such a claim is a prerequisite to bringing suit: “no suit for money or damages may be brought against a public entity on a cause of action for which a claim is required to be presented in accordance with Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of this division until a written claim therefor has been presented to the public entity and has been acted upon by the board, or has been deemed to have been rejected by the board, in accordance with Chapters 1 and 2 of Part 3 of this division.”

“Section 910 identifies the information a proper notice of claim should include to enable a public entity to investigate and evaluate the claim to determine whether settlement is appropriate.” (*Phillips v. Desert Hospital Dist.* (1989) 49 Cal.3d 699, 706.) In *City of San Jose v. Superior Court* (1974) 12 Cal.3d 447, 456, our high court observed that “the cases gauging sufficiency of claims must be divided into two groups. [¶] The first treats claims where there has been *some* compliance with all the required elements -- but compliance has been *defective*. [Citations.] In these cases the test of ‘substantial compliance’ controls: Is there sufficient information disclosed on the face of the filed claim to reasonably enable the public entity to make an adequate investigation of the merits of the claim and to settle it without the expense of a lawsuit? [¶] In the second group of cases the courts have been less lenient. Here, claims were successfully challenged for failure to comply entirely with a particular statutory requirement.

[Citations.] In determining the sufficiency of such claims, the more liberal test of substantial compliance has not been applied -- the courts recognizing ‘[s]ubstantial compliance cannot be predicated upon no compliance.’ [Citations.]” (Compare: *Mabe v. San Bernardino County, Dept. of Soc. Serv.* (9th Cir. 2001) 237 F.3d 1101, 1111.)

In *State of California v. Superior Court* (2004) 32 Cal.4th 1234, 1243, the Supreme Court made clear “that a plaintiff must allege facts demonstrating or excusing compliance with the claim presentation requirement. Otherwise, his complaint is subject to a general demurrer for failure to state facts sufficient to constitute a cause of action.” The holding reflects the well-established rule that “[t]he filing of a claim is a condition precedent to the maintenance of any cause of action against the public entity and is therefore an element that a plaintiff is required to prove in order to prevail.” (*Del Real v. City of Riverside* (2002) 95 Cal.App.4th 761, 767.)

Finally, we note that the Government Claims Act bars an action against the individual defendants as well as the District. Section 950.2 provides that “a cause of action against a public employee . . . for injury resulting from an act or omission in the scope of his employment as a public employee is barred if an action against the employing public entity for such injury is barred under . . . [the Government Claims Act].”

B. Application to the Facts

In this appeal, Ahmed argues that the grievance form submitted to the District’s Vice Chancellor of Administrative Services, Larry Hardy, in November 2002, served to satisfy the requirements of a claim under section 910. We conclude, however, that the form failed entirely to meet two statutory requirements. First, subdivision (e) of section 910 requires a claim to show “[t]he name or names of the public employee or employees causing the injury, damage, or loss, if known.” The form does not contain any mention of the individual defendants who are charged with negligence and fraud in the complaint, but only mentions that the claim was made orally to one Frissil Walker.

More fundamentally, subdivisions (d) and (f) of section 910 both require a description of damages sought by the claimant. Subdivision (d) provides that a claim

shall show “[a] general description of the indebtedness, obligation, injury, damage or loss incurred so far as it may be known at the time of presentation of the claim.” Subdivision (f) provides that the claim must state “[t]he amount claimed if it totals less than ten thousand dollars (\$10,000) as of the date of presentation of the claim, including the estimated amount of any prospective injury, damage, or loss, insofar as it may be known at the time of the presentation of the claim, together with the basis of computation of the amount claim. If the amount claimed exceeds ten thousand dollars (\$10,000), no dollar amount shall be included in the claim. However, it shall indicate whether the claim would be a limited civil case.”

The grievance form contains no description of damages incurred or indeed any mention at all of the damages now sought in the second amended complaint. Instead, it complains that the Advisory Selection Committee did not comply with the requirement that a completed form, designated form No. 9, which attests to compliance with certain administrative procedures, be posted at the hearing and shown to the person being interviewed. As the remedy sought, the grievance form requests: “Redo the Interview for full-time sociology position at Alameda College.”

The second amended complaint is clearly a “suit for money or damages” coming within section 945.4 and therefore must allege compliance with the California act. (*Hart v. County of Alameda* (1999) 76 Cal.App.4th 766, 778; *Ard v. County of Contra Costa* (2001) 93 Cal.App.4th 339, 343; § 905.) The only portion of the complaint that can arguably be regarded as relevant to the presentation of claims are the allegations of the sixth cause of action describing presentation of the grievance form. We conclude, however, that the grievance form fails entirely to comply with the statutory requirements of section 910, subdivisions (d), (e) and (f) because it does not mention a claim of damages or identify the persons causing the damages. Accordingly, the trial court properly sustained the demurrer to the second amended complaint and dismissed the complaint for noncompliance with the Government Claims Act.

The judgment is affirmed.

Swager, J.

We concur:

Marchiano, P. J.

Stein, J.